

Using the Dispute Resolution Service for .uk domain names online survey

Submit date : **Feb 16, 2007**

Question 1: Please give us feedback on our proposals that the DRS should include:

- (a) protection for words which have a distinctive character as a result of the use made of them.
- (b) dictionary words which are protected by registered trade marks or good will.

As no substantive change is intended, simply clarification, I suggest that this be achieved by separate guidance rather than change to the DRS policy. Altering the policy could itself raise further unforeseen problems or complexity. The same applies to quite a few of the issues in this consultation. However, one policy change which should be made is removal of the "wholly descriptive" reference. Not only is this unnecessary, it is misleading because - as Nominet point out - it doesn't cater for a term such as "British Petroleum" which may be a registered trade mark or which may have acquired distinctiveness. As to guidance, I suggest that consideration be given to a model along the lines of the "WIPO Overview of WIPO Panel Views on Selected UDRP Questions". I am a UDRP panelist (as well as a Nominet expert) and I find this tool extremely useful. It sets out the consensus panel views on key UDRP issues with illustrative decisions – as well as some minority views. It might improve the quality of pleadings if complainants and respondents were forced past such a page as part of the online complaint / response submission procedure.

Question 2: Please give us your feedback on our proposal that the DRS should include the following as examples of things that are not necessarily evidence of abuse:

- a general offer to resell a domain name
- sale of traffic (i.e. visitors to the domain name)
- registering many domains

For reasons explained above, I am against adding such statements to the DRS policy. But I see no reason why such examples should not appear in separate guidance so long as it is made sufficiently clear that each case depends on its own circumstances including the expert's assessment of the respondent's motive in registering / using the disputed domain name.

Question 3: Please give us feedback on our proposal that the DRS should include a statement that, where the evidence is finely balanced, the weaker the rights that the complainant has, the less likely it is that abusive registration or use will be inferred.

See answer to question 2.

Question 4: Please tell us which payment option you would prefer and why: no change; a small upfront fee; or loser pays?

No change. Easy accessibility to the DRS (including the mediation aspect) is an important benefit. I doubt that a modest upfront fee would itself improve the standard of complaints.

Question 5: How would you enforce any system of refund (outlined in option 3)? Which section of the community would you imagine would most benefit from a refund system?

I think it would be very difficult to enforce such a system.

Question 6: Do you have any comments about the proposals to change aspects of the procedure, payment, drafting, appeals, expert decisions, abusive registrations or miscellaneous issues?

Generally I am against change to the DRS policy or procedure unless there is a strong reason to do so. As indicated above, clarifications and explanations should appear in separate guidance. One area where I think there is a compelling case for change is in relation to 3a(ii) of the policy. I agree in principle that this should extend to likelihood of confusion. At the same time it should be made clear that 3a(ii) applies to the intentional creation of a likelihood of confusion – as does the equivalent paragraph 4b(iv) of the UDRP. Surely such intention on the part of the respondent (or otherwise) is the key issue. The existence or otherwise of actual confusion is of little relevance.

Question 7: Do you have any other changes you would like to see within the DRS, or topics within the DRS that you wish to comment on? In particular, if you have any views about any of the following topics which have been the subject of discussion, please let us know:

- Length of submissions and word limits.
- The impact of Internationalised Domain Names, if introduced.
- Whether experts can find a registration abusive for reasons not spelled out in the complaint.
- Whether there have been any practical problems with the treatment of 'Without Prejudice' material.
- Whether experts should be able to represent parties in other disputes, and if not how to keep the quality of experts high.
- Whether the detail of the DRS can be taken out of the contract and updated more regularly.

Please give us your contact details

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